

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>Constantin Vata,</b>	)	<b>CASE NO. 1:11 CV 1700</b>
	)	
<b>Plaintiff,</b>	)	<b>JUDGE PATRICIA A. GAUGHAN</b>
	)	
<b>Vs.</b>	)	
	)	
<b>Michael J. Astrue,</b>	)	<b><u>Memorandum of Opinion and Order</u></b>
	)	
<b>Defendant.</b>	)	

**INTRODUCTION**

This matter is before the Court upon the Report and Recommendation (“R&R”) of Magistrate Judge Kathleen B. Burke (Doc. 18) recommending that the decision of the Commissioner be affirmed. Plaintiff filed objections. For the reasons that follow, the R&R is ACCEPTED and the decision of the Commissioner is AFFIRMED.

**ANALYSIS**

Plaintiff, Constantin Vata, proceeding *pro se*, appeals the final decision of the Commissioner denying his application for social security disability benefits. The Magistrate Judge concluded that substantial evidence supports the ALJ’s determination that plaintiff is

capable of performing his past work and, therefore, is not disabled.

The Magistrate Judge thoroughly set forth the facts and they will not be restated herein.

Plaintiff objects on the grounds that his attorney failed to subpoena Dr. Shu-Huang to testify at the hearing. He claims he has been the victim of “medical and legal abuse” and that his attorney did not properly represent him during the administrative proceedings. As the Magistrate Judge correctly noted, however, there is no indication that Dr. Shu-Huang would have testified favorably to plaintiff. Plaintiff did not present any evidence of treatment notes from Dr. Shu-Huang or an opinion regarding limitations. Moreover, plaintiff’s attorney informed the ALJ that it was not necessary for Dr. Shu-Huang to appear and testify. Accordingly, the ALJ did not err by not issuing a subpoena to Dr. Shu-Huang. Plaintiff’s objection is not well-taken.

The Court has reviewed the record and finds that the Magistrate Judge properly concluded that the ALJ’s determination is supported by substantial evidence. The analysis is incorporated herein by reference and need not be repeated.

### **CONCLUSION**

For the foregoing reasons, the Report and Recommendation (“R&R”) of Magistrate Judge Kathleen B. Burke (Doc. 18) is ACCEPTED and the decision of the Commissioner is AFFIRMED. The court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

Dated: 9/6/12

/s/ Patricia A. Gaughan  
PATRICIA A. GAUGHAN  
United States District Judge